

February 6, 2017

BY ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51

Dear Ms. Dortch:

Pursuant to Section 1.3 of the Commission's rules, Sorenson Communications, LLC ("Sorenson") hereby requests clarification of the Commission's rules prohibiting financial or other incentives in the Video Relay Service ("VRS") program in light of a recent offer extended by one of Sorenson's competitors, ZVRS.¹ Although Sorenson believes this sort of offer should be permitted, it also believes the Commission's rules are unclear and ambiguous. Sorenson accordingly requests clarification of the Commission's rules to ensure a level playing field in the VRS market. This guidance can be provided in the first instance by the Consumer and Governmental Affairs and/or Enforcement Bureaus through a simple letter or public notice.

As Sorenson understands them, the FCC's rules generally prohibit VRS providers from offering users "financial and similar incentives, directly or indirectly, to use their service" or "make [V]RS calls."² Sorenson further understands that "[p]roviders that give consumers relay equipment cannot condition the ongoing use or possession of the equipment, or the receipt of different or upgraded equipment, on the consumer making relay calls through its service or the service of any other provider. In other words, providers cannot give consumers equipment as part of outreach efforts or for other purposes, and then require that the equipment be relinquished if the consumer fails to maintain a certain call volume. . . . In these circumstances, the consumers' ongoing receipt of a financial benefit – free equipment – is conditioned on the use of the equipment to make relay calls, calls that the Fund, and not the consumer, pays for."³ In addition, the Commission has also stated that a VRS provider "cannot condition the ongoing use

¹ See Exhibit A, attached.

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, FCC 07-186, 22 FCC Rcd. 20,140, 20,173, 20,176 ¶¶ 89, 96 (2007) ("Declaratory Ruling").

³ *Id.* ¶ 94.

or possession of equipment, or the receipt of different or upgraded equipment, on the consumer continuing to use the provider as its default provider.”⁴

In a recent marketing effort attached to this Request as Exhibit A, ZVRS made the following offer to a VRS user: “If you switch to ZVRS as your preferred provider, you can qualify for one of the two [VRS equipment] choices below.” On its face, this offer does not appear to violate the prohibitions against conditioning the ongoing use or possession of equipment, or the receipt of different or upgraded equipment, “on the consumer continuing to use the provider as its default provider,”⁵ or on actually placing VRS calls. Indeed, this offer does not appear to limit the VRS user’s ability to keep the ZVRS equipment regardless of whether he or she ever used ZVRS’ service; nor does it appear that the user would be prevented from “dialing around” ZVRS’ service to make a VRS call through another provider; nor does it appear that the user would be prevented from again changing default providers after receipt of the ZVRS equipment.

Sorenson notes, however, that per its Product Agreement with its users, ZVRS charges users a “Handling Fee” of \$100 to cover shipping costs of its videophone if a user ports the ten-digit number assigned to the videophone to another provider within six months of receiving the ZVRS videophone and also assesses an “Equipment License Fee” for unreturned equipment if a user ports the local ten-digit number assigned to his or her ZVRS videophone if the number “was obtained through a special offer to a default provider other than ZVRS.”⁶ In light of the Commission’s two iterations of the prohibition against incentives cited above, it is unclear to Sorenson that, read together with the Z Product Agreement, the offer in Exhibit A complies with the Commission’s rules.

Although Sorenson believes the offer in Exhibit A should be considered an acceptable marketing tactic in VRS, it believes the Commission’s rules are ambiguous. This ambiguity leaves providers at risk of post-hoc enforcement actions if they mirror ZVRS’ conduct, and at a competitive disadvantage if they do not. Rather than force providers choose between “rolling the dice” on a potential rules violation and accepting an inferior competitive position, the Bureau(s)

⁴ *Telecommunications Relay Services and Speech-to-Speech Services. for Individuals with Hearing & Speech Disabilities*, Second Report and Order and Order on Reconsideration, FCC 08-275, 24 FCC Rcd. 791, 810 ¶ 38 (2008) (citing Declaratory Ruling, *supra* note 2, ¶ 94).

⁵ *Id.*

⁶ Product Agreement, ZVRS (last visited Feb. 2, 2017), <http://www.zvrs.com/about/product-agreement/>.

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should promptly clarify its interpretation of current rules regarding incentives in VRS and in doing so level the playing field for all VRS providers.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata", written in a cursive style.

John T. Nakahata

Counsel to Sorenson Communications, LLC

Exhibit A

From: REDACTED
Date: December 5, 2016 at 2:24:16 PM CST
To: REDACTED
Subject: Hello There ZVRS Limited offer Z!!!




Hello There!

My name is REDACTED , an Inside Sales Representative with ZVRS.

Right now we have an exciting Limited Time Offer that you may be interested in!!

If you switch to ZVRS as your preferred provider, you can qualify for one of the two choices below:



Z5 MAX

Leave your TV on your favorite program and leave video calling to the Z5 MAX, a touchscreen champion of multitasking: surf the Internet or read your email while on the phone.

[LEARN MORE](#)



With Cisco's cutting-edge hardware and sleek style, a touchscreen and Z's clean user interface, the new Z70 is designed to bring stunning HD quality to your home or office communication.

[LEARN MORE](#)



With either product, you will receive a Firefly Set



The Firefly is part of our Call Alert package, which when used with Call Alerts via E-mail and/or Text, allow you to rest easy and not worry about missing calls.

LEARN MORE



For more information, please feel free to email me at
REDACTED and we can set up an appointment to chat on
VP!

Thank you for your interest in the Z! I look forward to welcoming you to
the Z Family!

Best,



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Representative

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